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December 1, 2022

## MEMO ENDORSED

### VIA ECF

Hon. Edgardo Ramos  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

Third-party witness Thomas Scully is hereby ordered to appear for a deposition on December 14, 2022. SO ORDERED.



Edgardo Ramos, U.S.D.J.  
Dated: December 5, 2022  
New York, New York

Re: *Dawkins v. Copeland*, 17 Civ. 9926 (ER) (S.D.N.Y.)

Dear Judge Ramos:

Pursuant to Fed. R. Civ. P. 37(a) and Your Honor's Individual Practices Rule 2.A.ii, Plaintiff respectfully requests that the Court enter an order compelling third-party witness Thomas Scully to sit for a deposition within the next two weeks.<sup>1</sup>

On November 30, 2022, at the direction of Plaintiff's counsel, a process server served a subpoena for a deposition on Mr. Thomas Scully. *See* Decl. of A. Guo ("Decl.") ¶ 2. Mr. Scully is a material witness to this matter because, upon information and belief, he was the cashier at the Rikers Island Central Cashier Office who handled Plaintiff's legal mail and may be (at a minimum) aware of circumstances surrounding Defendant Copeland's actions in refusing to send out Mr. Dawkins' mail, and prison practices and procedures relating to the sending of certified legal mail at the relevant time. *See* Opinion and Order dated Mar. 31, 2020, ECF No. 110 at 14 ("As Scully, the prison cashier, indicated, whether to post a letter when there were not sufficient funds was within the discretion of the mail officer – in this case, Copeland."); Decl. ¶ 3. Mr. Scully also spoke to Defendant Copeland about Mr. Dawkins' legal mail and mail policies affecting indigent inmates, and he is mentioned in grievance decisions relating to Plaintiff's complaints. *See* Decl. ¶ 3.

As attested in the accompanying declaration, on November 30, 2022, Mr. Scully called and left a voicemail informing Plaintiff's counsel that he had received Plaintiff's Fed. R. Civ. P. 30 subpoena and requested a call back. When counsel called Mr. Scully back, Mr. Scully stated that he would refuse to appear for a deposition. Mr. Scully also informed counsel that he is departing the country in approximately two weeks, and does not know when he will return.<sup>2</sup> Mr. Scully reiterated his opposition to appearing for a deposition in a second call made by Plaintiff's counsel on November 30, 2022. Decl. ¶¶ 4-5.

<sup>1</sup> In accordance with Your Honor's Individual Practices Rule 2.A.ii, we submit this letter motion without full briefing and a request for a pre-motion conference because additional delay may result in the loss of Plaintiff's right to preserve Mr. Scully's deposition testimony for the reasons described below.

<sup>2</sup> Discovery is scheduled to conclude on February 10, 2023. *See* ECF No. 161.

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We therefore respectfully request that the Court enter an order compelling Mr. Thomas Scully to appear for a deposition on December 14, 2022 to preserve his testimony for the record, prior to his alleged departure from the country. Plaintiff will take Mr. Scully's deposition at our offices in Midtown Manhattan, or in a location amenable to the Court, including the U.S. Courthouse if the Court deems it appropriate.<sup>3</sup>

Plaintiff has conferred with Defendant's counsel, who does not take a position on this motion.<sup>4</sup>

Respectfully submitted,

/s/ Alicia Guo

Lisa Zornberg

Michael J. Pisem

Alicia Guo

*Counsel for Plaintiff Edward C. Dawkins*

cc: Mr. David S. Thayer, Esq. (via ECF)  
Mr. Thomas Scully (via Federal Express)

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<sup>3</sup> The parties' counsel have conferred and are available to conduct the deposition on December 14, 2022 and in either location.

<sup>4</sup> Despite Mr. Scully's previous employment for the New York City Department of Correction, Defendant's counsel at the New York City Law Department does not currently represent Mr. Scully. Decl. ¶ 6. Mr. Scully is of course invited to seek counsel if he wishes.